fied, and if no definite date can be decided upon for delivery, it should have been made within a reasonable time. The plaintiff was buying for the winter trade, and thus it appears as if time were of the essence of the contract within the rule laid down in *Norrington* v. *Wright,* 115 U. S. 188. The goods in the principal case were known not to be in such a condition that an immediate delivery was feasible, and so the law must imply an undertaking by the seller to deliver within a reasonable time. MECHEM, SALES, Vol. 2, § 1129. *Pope* v. *Terre Haute Car & Mfg. Co.,* 107 N. Y. 61. The conclusion of the court in the principal case is sound that treating the contract as closed by the letter of June 11 and the other letters as evidence throwing light upon the language used in the letters of June 1st and June 11th, no contract is shown by which any definite day was fixed for the arrival of the salt. But the conclusion reached by the dissenting judge as to the disposal of the case does not contradict this other conclusion and works out the case more satisfactorily. There was a contract for the sale of salt, and both parties seem to have understood that no definite day was set for delivery. An approximate date, however, was set, and it was incumbent upon the defendant to deliver within a reasonable time after that date. By December 4th the salt was not delivered, the winter business and plaintiff's trade standing were injured. Justice would seem to require the allowance of damages.

STATUTE OF FRAUDS—SALE OF GOODS—ACCEPTANCE OF PART OF GOODS—SUFFICIENCY.—The defendant made an offer to buy several thousand feet of the plaintiff's lumber then in defendant's possession. Plaintiff accepted the offer on the next day. Five days later defendant notified plaintiff that he would not purchase the lumber. *Held,* that there was no acceptance of the goods by defendant and hence no sale under the Statute of Frauds. *Godkin* v. *Weber* (1908), — Mich. —, 117 N. W. 628.

On the first trial of this case, reported in 114 N. W. 924, the court inclined to the view that there was a delivery and acceptance, sufficient under the Statute of Frauds to constitute an enforceable sale. On the rehearing the court decided, by a vote of five to three, that there was no acceptance of the lumber. The Statute of Frauds requires both delivery and acceptance. The question here is as to acceptance. BENJAMEN, SALES, REV. Ed., Vol. 1, § 163, points out the inconsistency of the cases on the point whether mere silence and delay in notifying refusal of goods constitute constructive acceptance, saying that "The fair deduction from the authorities seems to be that this is a question of degree, that a long and unreasonable delay would afford stringent proof of acceptance, while a shorter time merely constitutes some evidence to be taken into consideration with the other circumstances of the case." The leading opinion cites many cases to show that some affirmative act by the defendant is necessary to take the case out of the statute. It takes the position that the five days' delay was not evidence of acceptance, and that to hold otherwise would be to bind defendant by a void parol contract because he did not repudiate it. The dissenting opinion holds that as this was bulky property already deliv-

ered and that the defendant could have repudiated it in a few hours, his delay of five days was evidence of delivery and acceptance. *Hobbs* v. *Massasoit Whip Co.*, 158 Mass. 194, holds that silence and retention for an unreasonable time may warrant a finding of acceptance. *Pierson* v. *Crooks*, 115 N. Y. 539, holds this also. Conduct which imports acceptance is acceptance in the view of the law, whatever may have been the state of mind of the party. *O'Donnell* v. *Clinton*, 145 Mass. 461; *McCarthy* v. *Boston & Lowell Ry.*, 148 Mass. 550. While the cases cited in the leading opinion, like *Silkman Lumber Co.* v. *Hunholz*, 132 Wis. 610, and *Dorsey* v. *Pike*, 50 Hun 534, are good authorities for the proposition that some affirmative act other than mere possession is necessary to constitute an acceptance, yet there seems to be sound reasoning in the dissenting opinion that the delay worked an acceptance in such a case as the principal one.

SURETYSHIP—LEGALITY OF CONTRACT—AGREEMENT BY PRINCIPAL IN CRIMINAL BAIL BOND TO INDEMNIFY SURETY.—The intervener in condemnation proceedings seeks to prove a contract with the defendant G. whereby the property sought to be condemned should be held by the defendant K., as stake-holder, to indemnify the intervener against all loss he should sustain by reason of becoming surety on G.'s criminal bail bond, which bond was subsequently forfeited and satisfied out of the property of the intervener. *Held*, that the contract was void as against public policy. *United States* v. *Greene et al.* (1908), — C. C., W. D., Va. —, 163 Fed. 442.

This decision is in accordance with the weight of authority and reason. It is well settled that no contract of the principal in a criminal bail bond to indemnify his surety will be implied. *United States* v. *Ryder*, 110 U. S. 729; *Cripps* v. *Hartnoll*, 4 B. & S. 414; HIGHMORE, BAIL, p. 202. In *Cripps* v. *Hartnoll* there was an agreement by a father to hold the plaintiff harmless on his obligation as surety on the daughter's criminal bail bond, and the court allowed a recovery. The question in the case was whether or not the contract came within the Statute of Frauds, under the rule in *Green* v. *Cresswell*, 10 A. & E. 453, then the law in England. The rule in that case was that if the original party was under obligation to indemnify the surety, then the promise of a third person to hold harmless the surety was a promise to answer the debt, default, or miscarriage of another, and within the statute. To take the case of *Cripps* v. *Hartnoll*, supra, out of the statute it was necessary to hold that the obligation of the principal in the bail bond was to the Queen alone and not to the surety. Hence there would be no obligation to indemnify the surety for the consequences of non-appearance. The fundamental object of the bail bond is not to indemnify the state against the non-appearance of the defendant, but to insure such appearance. This differentiates criminal from civil bail. *United States* v. *Ryder*, supra. This case does not even contain dicta to support the implication in the syllabus that an express contract of indemnity will be enforced. *United States* v. *Simmons*, 47 Fed. 575, goes still further and holds that where it appears that the sureties have been indemnified by the principal their bond should not be accepted. Surely it would be against public policy